



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 11, 2019
MOAHR Docket No.: 19-009867
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on October 9, 2019, from Lansing, Michigan.

Petitioner personally appeared and testified unrepresented.

The Department of Health and Human Services (Department) was represented by Natalie McLaurin, Hearings Facilitator.

ISSUE

Is there a right to a hearing on an action not yet taken by the Department?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On August 27, 2019, Petitioner filed a hearing request for FAP in Saginaw County without indicating or explaining the nature of her appeal.
2. On September 25, 2019, the Michigan Office of Administrative Hearings and Rules (MOAHR) scheduled an administrative hearing for October 9, 2019. At the administrative hearing, Petitioner stated that she disputed the fact that Kalamazoo County failed to add her two children to her FAP group. Petitioner's case transferred from Kalamazoo to Saginaw on March 26, 2019.

3. Petitioner previously requested an administrative hearing disputing why her children were not added in Kalamazoo County. Petitioner met with Saginaw County and a prehearing conference call was held between Petitioner, Saginaw County, and Kalamazoo County. On May 13, 2019, Petitioner withdrew her hearing request.
4. Petitioner's August 27, 2019, hearing request does not allow Petitioner a right to a review of actions taken by the Department for 90 days prior to the request.
5. The Department stipulated at hearing that all verifications have been received and the Department is pending processing Petitioner's FAP budget and group composition issues.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, applicable federal regulations are found at 7 CFR 273.1(a), (b); 7 CFR 273.2. Corresponding Department policy is found at BAM 130, 212.

Here, Petitioner argues that Kalamazoo failed to add her two children to her case when they were returned to her home in March 2019. However, Petitioner had no authority that would grant jurisdiction here to review any action(s) taken by the Department more than 90 days prior to a hearing request. The record here indicates that Petitioner filed her hearing request August 27, 2019. Moreover, Petitioner failed to indicate on her hearing request the reason for requesting an administrative hearing. As such, Saginaw County was unable to fully prepare for the hearing as the Department represented that there is no Notice of Case Action taken.

As to Petitioner's current pending FAP case, the Department stipulated that currently all necessary verification(s) have been received. The Department stipulated that there is no dispute regarding any failure by Petitioner to return any verifications. As to the status of the new FAP budget, such is premature. Once the Department processes Petitioner's FAP case, a new notice will be issued to Petitioner informing her of her new certified FAP benefit. Petitioner shall have a right to an administrative hearing on the new


determination should she dispute that action. Until then, the undersigned has no jurisdiction to review an action not yet taken by the Department.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that Petitioner failed to bring forth evidence of a right to an administrative hearing at this point in time as such is premature. As such, Petitioner's hearing request is dismissed.

DECISION AND ORDER

Accordingly, Petitioner's hearing request is dismissed for lack of jurisdiction.

JS/hb



Janice Spodarek
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI 48607

Saginaw County, DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]